PRIVATE LEGISLATION

(SCOTLAND)

REPORTS

VOLUME VII

BY

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AND

A. BEVERIDGE, PARLIAMENTARY SOLICITOR

SESSION 1907

TABLE OF PROVISIONAL ORDERS, THE PROCEEDINGS IN CONNECTION WITH WHICH ARE REPORTED IN THIS VOLUME.

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TABLE OF THE REPORTS OF
OF REFEREES ON

Years.	Repor
1865–66	Smethurst's Appen
1867–69	1 Clifford & Stephe
1870–72	2 Clifford & Steph
1873–76	1 Clifford & Ricka
1877–80	2 Clifford & Ricka
1881–84	3 Clifford & Ricka
1885–89	Rickards & Michae
1890–94	Richards & Saunde
1895–99	1 Saunders & Aust
1900–04	2 Saunders & Aust
1905–	1 Saunders & Bidd

*** The present Series of Report
volume being prefixed ; th

PRIVATE LEGISLATION (SCOTLAND) REPORTS.

CALEDONIAN RAILWAY PROVISIONAL ORDER.

Glasgow, 20th March 1907.

[Before Viscount Falkland, *Chairman;* Lord Templemore; and John Fleming, Esq.]

Dundee Gas Commissioners, objectors.

Locus Standi—Railway—Transfer of Lines—Ratification of Agreement with Vendors—Users of Railway.

The owners of a railway promoted an Order for the purpose, *inter alia,* of confirming an agreement to take a feu of a part of their line which they had previously held on lease from a body of Harbour Trustees. This agreement contained clauses providing that, after the widening of said part of the line, or at least "not later than seven years after" the Confirming Act should be passed, the promoters should carry all goods and mineral traffic which might be tendered to them to and from any part of the harbour. *Held* that a body of Gas Commissioners whose gasworks were connected with said harbour by the promoters' railways and served by them had a *locus* to be heard on the preamble.

This Order was promoted by the Caledonian Railway Company, and, *inter alia,* it was sought to ratify and confirm an agreement between the promoters and the North British Railway Company as joint owners of the Dundee and Arbroath Joint Railway on the one hand and the Dundee Harbour Trustees on the other. The agreement in question had reference to the purchase by the said Railway Companies as owners of the Dundee and Arbroath Railway of a part

to acquire from the Harbour Trustees a feu of the ground on which that part of the railway stood, and to make certain extensions of the line by increasing the number of rails from two to four. To the part of the Order which ratified and confirmed this agreement the Dundee Gas Commissioners made objections, and they claimed a general *locus* to oppose the Order.

The articles of the said agreement to which the Gas Commissioners made objection contained the following provisions:—

Article 12.—"When the Companies shall have widened their railway between Camperdown level crossing and Stannergate [the part of the line to be acquired] to four lines of rails the Companies shall, so far as reasonably practicable, work the coke, coal and other traffic to and between the gasworks and the harbour, whether over the existing or any altered or extended lines of the [Harbour] Trustees and the lines of the Companies, and any difference between the Trustees and the Companies arising under this article shall be referred to an arbiter to be appointed; failing agreement, by the Board of Trade."

Article 13.—" . . . Further, as soon as the railways shall have been widened between Camperdown level crossing and Stannergate to four lines of rails and, in any event, not later than seven years after the passing of the Act confirming this agreement, the Companies shall, so far as within their ability, respectively carry and convey all goods and mineral traffic that may be tendered to them for conveyance to and from the coal hoist or any part of the harbour, whether over the existing or any altered line or extended lines of the Trustees."

The gasworks of the objectors were situated at the opposite side of the railway in question to the harbour of Dundee; and the traffic between the gasworks and the harbour required to be transported across the promoters' railways. In their petition the Gas Commissioners said: "Your petitioners' gasworks are situated close to the harbour railways of the Companies, and are connected therewith by branch lines of railway for convenience of traffic. Your petitioners produce large quantities of coke at their gasworks, which is sold in the open market. A considerable quantity of the coke thus produced,

Order, and owning and working the only railway directly connecting Dundee with Methil and Burntisland. The North British Railway Company accordingly derive a large revenue from your petitioners for the carriage of this traffic, far in excess of the amount which would be charged for sea transit were the traffic conveyed from your petitioners' gasworks to the harbour of Dundee and there shipped."

" . . . Your petitioners are desirous of having immediate facilities afforded to them for shipping large quantities of their coke at the harbour of Dundee, which is the proper and natural port for such shipment, instead of sending it by rail for shipment at ports in Fife; but they are debarred from doing so because of the refusal of the Companies to carry such traffic over the existing railways from the gasworks to the harbour of Dundee. In consequence of such refusal, your petitioners and the community of Dundee and the surrounding districts, whom they supply with gas at cost price, have suffered, and are at present suffering, very great pecuniary loss.

"Notwithstanding the fact that your petitioners have again approached the Companies with the view of securing the working of your petitioners' coke traffic between their gasworks and the harbour of Dundee, the Companies refuse to work the same, and now, by article 13 of the said agreement, seek power to set back for seven years the granting of such traffic facilities, which your petitioners submit they are reasonably entitled to. Your petitioners and the public supplied by them with gas are therefore injuriously affected thereby, and for the reasons and in the circumstances above set forth they object to the said article 12 and the said article 13, so far as above recited, of the said agreement, and to the proposed confirmation thereof by the Order."

On the question of the *locus* of these petitioners it was *argued* for the promoters:—In so far as the complaint of the petitioners was based on an alleged refusal by the Railway Companies to carry the petitioners' traffic it was not a matter which was competent to this tribunal at all. The Railway and Canal Commission existed for the purpose of compelling the Companies to fulfil their duties; and if the petitioners had a good ground of complaint that the Companies were not carrying traffic which they ought to carry, or were giving an undue preference to certain traders, then the Railway and Canal

Harbour Trustees the Companies sought "power to set back for seven years the granting of such traffic facilities," there was nothing in the agreement which would debar the petitioners from going to the Railway and Canal Commission at once, or at any time during the seven years, to enforce any good claim which they might have for greater traffic facilities. While the works were in progress which this agreement contemplated it might be impossible to grant to the petitioners greater facilities than they at present had; but the agreement in no way deprived the petitioners of any of their rights. Accordingly they should not be allowed a *locus* to oppose the preamble of the Order.

Argued for the objectors:—The position of the Railway Companies, who were at present mere lessees of the part of the railway in question, was being entirely altered by this Order. When that was being done, it was of vital concern to these objectors that the interests of their traffic should be considered. The promoters had made an arrangement with the Harbour Trustees and bargained with them as to the control of the objectors' traffic; but this had all been done without any reference to the objectors. It had been held by the Courts both in Scotland and in England that the Railway and Canal Commission had no power to deal with private sidings; and even though the Railway (Private Sidings) Act, 1904,* had since been passed professing to give that Commission power to control certain questions connected with private sidings, yet nothing should be done by this Order to prejudice these objectors in any application which they might have to make to that Commission. At the present time the promoters plead the difficulty of giving the objectors facilities for their traffic, because it has to cross the main line of the Dundee and Arbroath Joint Railway; but if that main line were doubled in width, the promoters would make that plea with much greater force and the objectors would thus be prejudiced. Further, it was to the interest of the promoters to make the traffic of the objectors with the Harbour difficult, since they thereby obtained the profits of conveying the objectors' coke to the ports of Fife at a much heavier freight. A danger of suffering prejudice from what was proposed to be done by the Order was

Edinburgh, 25th and 26th April 1907.

DUNDEE CORPORATION PROVISIONAL ORDER.

[Before John A. Dewar, Esq., M.P., *Chairman;* Lord Saltoun; Lord Torphichen; and Viscount Dalrymple, M.P.]

The Dundee, Broughty Ferry and District Tramway Company, objectors.

Locus Standi—General Locus—Burgh Extension—Tramway Company owning Tramways in Area to be Included—Terms of Purchase by Local Authority —Representation.

A burgh sought powers to extend its boundaries to include, *inter alia*, a portion of roadway on which a tramway company owned and worked a tramway. The Tramway Company, in a petition against the Order (in addition to averments as to the effect of the Order on their interests), stated that the extension was not required by congestion in the burgh, or desired by the inhabitants of the area proposed to be included. *Held* that the company had no general *locus* to entitle it to a proof of these averments.

This Order was promoted by the Town Council of Dundee for the purpose of extending the boundaries of that burgh. They proposed to include, *inter alia*, the ground lying between Dundee and the Burgh of Broughty Ferry, including a roadway on which were laid some 1540 yards of the tramways belonging to the Dundee, Broughty Ferry and District Tramways Company. That Company opposed the Order. When the Tramway Company obtained its powers by Provisional Order in 1904,* it made bargains with the Burgh of Dundee and with the county authorities modifying the general statutory provisions † with reference to the taking over of the tramways by the local authorities, and these modifications received statutory sanction in that Order as confirmed. It was therein provided that (instead of the provisions of the Tramways Act, 1870) the local authorities in whose district the tramway lay might take over the tramway within six months after the expiry of

concern. But it was further provided as an exception to this, that in the event of the extension of the boundaries of Dundee to include the portion of the tramways between the eastern boundary of that city and the western boundary of Broughty Ferry, the Dundee Corporation might require the company to sell that portion on the expiry of *ten* years or of any subsequent period of five years from the commencement of the Order at the *structural value*. These provisions of the Tramway Order of 1904 were referred to in section 5 of the Tramway Company's petition against the present Order, and the objectors argued that the transfer of the roads in question to Dundee would prejudice them, in so far as the terms of purchase which they could exact from that city were not so good as those to which they would be entitled if the roads remained under the county authority. On that section of the petition the promoters did not object to the Company's *locus*.

Section 6 of the petition proceeded:—"So far as your petitioners are aware, there is no suggestion that the wants of the inhabitants of the district in question have not been adequately provided for by the present local authority, or that the inhabitants are dissatisfied with the administration of that authority, or have expressed a desire to be included within the city. There are no local circumstances which make it expedient in the public interest that the extension should be granted. The district is only sparsely built upon; it is not in any sense a populous place. There is no congestion of population within the city itself, nor, having regard to the large areas of unfeued land within the city, is there likely to be for years to come. A similar application made by the Corporation only a few years ago was rejected by Parliament, and the conditions have not altered to an extent to justify its repetition. The real motive of the Corporation is, your petitioners believe, a desire to secure an additional area for rating purposes, and to make the eastern boundary of the city coterminous with the boundary of the Burgh of Broughty Ferry."

On this section of the petition the promoters objected to a *locus* being granted.

Argued for the promoters:—The special interests of the tramway company were sufficiently set forth in section 5 and other sections

heard against the seal of the County Council, who were not opposing. The Company was not a proprietor in the sense of General Orders; no tramway company required to receive a proprietor's notice. If the company were granted a general *locus* to put forward on behalf of the public such matters of policy as those referred to in section 6, then the promoters would require to lead proof in support of the Order just as if they had to meet the opposition of the County Council and the inhabitants of the district.

Argued for the Tramway Company:—The Tramway Company was a large ratepayer, and was also a proprietor in virtue of owning the tramway, including the permanent way on which the rails were laid. The Company appeared as proprietor in the Valuation Roll. The situation was analogous to that of the Glasgow Corporation, which was held to be a heritable proprietor in respect of ownership of the water-pipe to Loch Katrine. The section of the 1904 Order giving the Burgh of Dundee the right to purchase the petitioners' property after ten years in the event of this extension taking place gave the petitioners a special interest in this extension, and entitled them to a special *locus*. This Company as owners of the tramway were entitled to a general *locus* on the question whether or not their property was to be brought within the burgh, as proposed in this Order.

The Commissioners *refused* a *locus* on section 6 of the petition, sustaining the *locus* on the other sections.

Mr. B. W. Ballingall, objector.

Burgh—Acquisition of Lands—Prohibition of Sale of Intoxicating Liquors—Property of Town Council.

A town council which sought powers to purchase property for street improvements inserted a proviso that on such of these properties as they might sell or dispose of no intoxicating liquors should be sold, and that restrictions to that effect should be inserted in all deeds and conveyances thereof to be granted by them. At the instance of a yearly tenant of a public-house scheduled to be taken over the Commissioners deleted this proviso.

In the same Order the promoters sought power to acquire certain

selling or otherwise disposing of such lands and properties as they might think fit (clause 60), "provided that no portion of the buildings so sold or disposed of shall be used for the sale of intoxicating liquors, and that on any such sale or disposal of the said ground or buildings, or any part thereof, there shall be inserted in the deeds or conveyances to be granted by the Corporation a clause prohibiting the sale of intoxicating liquors on such ground or buildings or any part or portion thereof in all time coming."

Objection was taken to this proviso by Mr. W. B. Ballingall, a tenant of premises scheduled for compulsory purchase under these clauses of the Order and presently conducted by him as a duly licensed public-house. In his petition (besides other objections which were either abandoned or compromised) this objector contended that this proviso with reference to the sale of intoxicating liquors was "unusual, unnecessary, vexatious and unjust. In the event of its being allowed, and of the Corporation having power, on the sale or disposal of any portion of the buildings occupied as aforesaid by the petitioner as licensed premises, to condition that no portion thereof shall be used for the sale of intoxicating liquors and to insert a prohibition clause to that effect in the deeds or conveyances of such buildings or the ground or any portion thereof in all time coming, the rights and interests of the petitioner will be seriously and injuriously affected. The said proviso should be disallowed, or at least modified in such a way as to preserve to the petitioner all his rights, interests and property, or so as not injuriously to affect these."

From the evidence led for the objector, it appeared that he was a yearly tenant of the premises in question.

Argued for the promoters:—The objector would receive full compensation for disturbance in the usual way, and no right or interest would then remain in him, which could be prejudiced by the proviso. The Corporation might very well have come to the conclusion that it was undesirable for property remaining in their hands and having to be leased by them to become the subject of determination by themselves as a Licensing Court when a question of granting a licence arose. If this was a desirable provision in the interests of temperance, there was no reason why it should not

LEITH BURGH PROVISIONAL ORDER.

Edinburgh, 25th, 26th, 27th, 29th and 30th April 1907.

[Before John A. Dewar, Esq., M.P., *Chairman;* Lord Saltoun; Lord Torphichen; and Viscount Dalrymple, M.P.]

The Commissioners of the Harbour and Docks of Leith, objectors.

Rating—General Burgh Rate—Liability of Harbour and Docks—Statutory Commissioners—Amendment of Confirming Bill in House of Lords.

Rating—Public Health Rate—Liability of Harbour and Docks—Statutory Commissioners.

Harbour—Board of Commissioners—Representation of Town Council—Disqualification of Town Councillors.

Confirmation—Joint Committee Refused by one House—Amendment of Confirming Bill in other House.

An Order was promoted by a burgh for the purpose, *inter alia*, of repealing an exemption from the general burgh rates granted by statute to the harbour and docks within the burgh. The Commissioners *found* that this part of the preamble was proved. After an appeal by the Harbour Commissioners had been rejected by the House of Commons, the House of Lords struck out the repealing clause.

A burgh sought by Provisional Order to have the Public Health Rate reimposed on the docks within its bounds. Although liable to this rate under the Public Health Act, 1867, docks had been held not to be liable under the later Act of 1897. This part of the preamble was *held* proved.

The Town Council of a burgh which was entitled to elect representatives on the Board of Commissioners of a harbour was debarred by statute from electing its own members. The Town Council promoted an Order, *inter alia*, to remove this disqualification; this part of the preamble *held* not proved.

This Order was promoted by the Magistrates and Council of Leith for the purposes—(1) of imposing on the harbour and docks of Leith the public health assessment from which they were exempt; (2) of imposing on the harbour and docks the ordinary burgh rates;

moters to borrow money for a suspense account in connection with their tramways.

The Commissioners of the Harbour and Docks of Leith opposed all these four purposes of the Order; but at the hearing the opposition to the tramway provisions (No. 4, *sup.*) was withdrawn.

In the 18th century, before Leith had any corporate existence apart from Edinburgh, the latter city which had control over the harbour of Leith began to develop that harbour. In 1771 there was a commission appointed to control certain matters of administration in Leith; but many of the Commissioners were directly nominated by Edinburgh, and to that city were expressly reserved "all jurisdiction, rights and privileges competent and belonging to them." In 1805 Edinburgh received a loan of £20,000 from the Government for the development of Leith docks; and in the following year another Act for the administration of Leith affairs was passed, which gave rating powers to the Commissioners of Leith. In 1826 the harbour and docks of Leith, which had been directly managed by Edinburgh, were placed under a special Dock Commission, but the right of property in them, and the right to levy dues, remained vested in Edinburgh. In 1827 a Police Act for Leith (7 & 8 Geo. IV. c. 112) was passed, and rating powers were therein given, but subject to the following exemption:—Section 49, "Provided always that nothing in this Act contained shall authorise the imposition of the assessment hereby authorised upon any part of the rates and duties leviable by the harbour and docks of Leith, nor to alter or affect any existing obligations upon the Lord Provost, Magistrates and Council of the City of Edinburgh, or the Commissioners for the Docks and Harbour of Leith, to watch and light the docks and harbour foresaid or any part thereof." Edinburgh at that time was responsible for the lighting and watching of the docks. In 1833 Leith became a Parliamentary burgh. The debt owing to the Treasury in respect of advances made for the enlargement and improvement of the docks and harbour had in the meantime been increased by a loan of £240,000, provided in 1825 by 5 & 6 Geo. IV. c. 103. By that Act (section 6) it was provided that the City of Edinburgh (still the owner of the harbour) should "grant to

and to the same, and all quays, houses, lands, and other property purchased for the purpose of the harbour" until the loan with interest should be repaid. The loan of £25,000 in 1805 had been secured by a similar assignation of the harbour rates. Soon after the Act of 1825 the City of Edinburgh became financially embarrassed, in consequence of which an arrangement was come to which was embodied in an Act of 1838, 1 & 2 Vict. c. 55. By that Act Leith was completely separated from Edinburgh, the debts to the Treasury were postponed, and the docks (now under Commissioners independent of the Edinburgh Council) had the following permanent burdens placed upon them:—(1) Petty customs which went to Leith instead of as formerly to Edinburgh, and (2) annuities amounting to £7680 *per annum* to certain creditors of the City of Edinburgh. These have since been commuted. The Dock Commissioners were to continue to police, light and cleanse the docks.

The Police Act for Leith of 1827 (above narrated) with its power of rating conferred on Leith subject to an exemption for the docks and harbour was repealed in 1848 by 11 & 12 Vict. c. 123; but by section 45 of the latter Act a similar exemption was accorded to the docks and harbour in the following terms:—"Provided always that nothing herein contained shall authorise imposition of the assessment herein authorised upon any part of the rates or duties leviable on the harbour and docks of Leith, nor alter nor affect any existing obligations on the Commissioners of the Harbour and Docks of Leith to watch and light the docks and harbours foresaid." The debts due by the Harbour to the Treasury for advances, which were secured by mortgage as above mentioned, subsisted until 1860, when the Treasury was authorised by 22 & 23 Vict. c. 48, to accept in full discharge the sum of £50,000, which was in fact paid. In this way the obligation and, along with it, the security were terminated.

Several attempts had been made by the Burgh of Leith to remove this exemption from rates which the Dock Commissioners enjoyed. In a Provisional Order applied for in 1863 there was a clause abolishing the exemption. The Order containing that clause was issued by the Home Secretary; but in the Confirming Act was inserted a provision that (the exemption) section 45 of the Act of

to the Dock Commissioners were liable to assessment. This view was repelled by the Courts.

A third attempt to repeal the exemption was made by the burgh in opposing a Provisional Order promoted by the Dock Commissioners in 1875. The opinion of the Commons Committee on that Order was that the subject ought to be dealt with in a public general statute. In view of this expression of opinion the Burgh of Leith endeavoured to get its wishes embodied in the General Police Bill, which ultimately became the Act of 1892. But the course adopted by that Act was embodied in section 373, which provided that no assessments provided by that Act should be imposed on lands and premises exempt by statute from the corresponding assessments of previous Police Acts, "unless and until such exemption is repealed by Provisional Order, confirmed by Parliament as hereinbefore provided." It was accordingly claimed by the promoters that they were adopting the course clearly contemplated by the Legislature in thus applying for the present Order, which (they argued) was the equivalent of the Provisional Order referred to in the Police Act.

With reference to the public health rate, the facts were as follows:—That rate was first imposed by the Public Health Act, 1867. Under that Act the harbour and docks of Leith were liable to this assessment and paid the rate for more than thirty years. But the Public Health Act, 1897, reimposed the rate in somewhat different terms. These terms were not regarded as exempting the Harbour Commissioners, and they continued to pay until 1905 when a decision of the House of Lords settled that in the case of Greenock * the Act of 1897 did not impose the public health rate on the docks and harbour. Since that judgment the Leith Dock Commissioners, considering that their case was ruled by it, had refused to pay the public health rate.

The representation of the Town Councils of Leith and Edinburgh on the Dock and Harbour Commission had existed ever since the Act of 1838 before referred to; and the rule excluding from the Commission members of those Town Councils as representatives

promoters to borrow money for a tramways suspense account was withdrawn at an early stage of the proceedings.

It was *argued* for the promoters:—The exemption from burgh rates had no present justification, since the special circumstances in which it had originated no longer existed. The original exemption was due (*first*) to the doubt which long existed in the minds of judges and lawyers as to whether such bodies as the Dock Commissioners, who owned for the public benefit and had no beneficial interest, were liable for local rates; and (*second*) to the fact that the Crown, through the Treasury, had a mortgage over the docks and harbour and the dues thereof in security of the sums lent for their improvement and extension. It was well-recognised law that Crown property was not liable for local rates, and the Leith docks, being at that time vested in the Crown, though only in security, were treated as Crown property. That security of the Treasury over the docks ceased in 1860, and with it ceased the ground of the exemption. The older theory of the lawyers that a statutory appropriation of the harbour revenues would exempt them from local rates was finally overturned by the House of Lords in the Mersey Docks case;* and in the case of Leith Docks their liability for poor-rates (to which the statutory exemption did not apply) was settled in *Leith Dock Commissioners* v. *Miles*.† Thus, after the extinction of the Crown security rights in 1860 the Leith docks were held by the Courts to be liable for poor-rates; and thereafter there remained merely a statutory exemption from other rates—an exemption granted under conditions which had now ceased to exist. There had been no decision by Parliament against the claim now made by the promoters, for they had first been told that the matter was one appropriate to a general Act, and then, when they tried to get the powers incorporated in the General Police Act, 1892, the view of Parliament was that each case should be treated separately on its merits. The existence of these large docks caused a very heavy traffic in the streets leading to them, and entailed heavy charges on the burgh for paving and lighting them. Though it was true that the docks were a benefit to Leith, yet they were rather a benefit to the country at large, and it was not reasonable that the Leith

ratepayers should bear all this additional burden which the presence of the docks involved. Under the existing system the harbour trustees were getting advantages for one set of traders at the expense of another. The promoters were prepared to give the Harbour Commissioners full credit by way of relief for all that they were doing for the dock police and for the upkeep of certain roads.* Other harbours had to pay local rates, and the present position of Leith harbour was one of unfair privilege. Grangemouth, Methil, Bo'ness and Burntisland harbours were all paying rates. It was true that Leith harbour was not making profits for shareholders as were those others, but in Leith all the profits earned went to the shippers and traders using the harbour in the shape of reduction of dues, and this benefit to them came from the pockets of those ratepayers who were not interested in the docks. Glasgow was an example of a harbour where no profits were earned for private individuals, and yet they were liable to all local assessments.

On the question of the public health assessment the promoters *argued* that it was by inadvertence and not by intention that the Act of 1897 removed the liability on the docks which had existed for thirty years. Leith docks made heavy demands on the public health equipment of the burgh. Outlay on hospitals and quarantine stations was required in order to prevent Leith from being declared an infected port. Through the shipping small-pox, plague and other infectious diseases had been introduced. The public health equipment required an annual sum of £13,000, and in equity the Dock Commissioners should bear their share.

It was *argued* further for the promoters that there was now no reason for the exclusion of members of the Leith Town Council from the Dock Commission. The Town Council was entitled to elect three representatives on the Dock Commission, but they were at present debarred from electing any member of the Town Council. They sought (section 6 of the Order) to remove that disability. The present arrangement was come to in the Act of 1838 at the time of the separation of Leith and Edinburgh after the insolvency of the latter. For many years past all the representatives of the Leith Town Council, with one exception, had been former members of the

their connection with the Council had ceased. It was desirable that when a man, otherwise well qualified for the Dock Commission, happened to be a member of the Town Council he should not thereby be disqualified.

Argued for the Leith Dock Commissioners, objecting:—The exemption of the docks from liability for local rates was originally part of a bargain come to on the occasion of the insolvency of the City of Edinburgh and embodied in the Act of 1838. Edinburgh made the docks; Leith put no capital into them; and originally Edinburgh bore the burden of lighting, cleansing and policing. Then the insolvency of Edinburgh led to an arrangement among all the parties concerned, the Government as creditor and security holder, the other creditors, the City of Edinburgh, and Leith which was now being definitely separated from Edinburgh. The docks were one of the important assets of the insolvent city. So far as concerned the docks the agreement come to included the postponement of the debt to the Treasury, the institution of an independent body of Dock Commissioners, and the permanent imposition of certain burdens on the docks in favour of the creditors of the City of Edinburgh. The latter included the obligation of policing, cleansing and lighting, and the obligation of certain annual payments in perpetuity to creditors of Edinburgh, including the city ministers, educational institutions, etc., amounting in all to £7680. These annual payments had been commuted at different times; but they represented the burden which the dock undertaking was then considered able to bear. Such was the bargain which received statutory sanction in 1838, and no good reasons had been urged why it should now be upset. In pursuance of that agreement the Legislature had consistently and repeatedly refused to impose on the docks an additional burden in the shape of local rates. In 1848, in 1878 (Roads and Bridges Act, sect. 101), in 1889 (Water of Leith Purification Act, sect. 79), in 1892 (General Police Act, sect. 373), and as recently as 1903 (Burgh Police Act, sect. 98 (7)), this exemption had consistently been maintained. The debt of the docks to the Government for the moneys advanced was not extinguished by the Act of 1838 but merely postponed. Such, however, was the

Government that the docks and harbour of Leith were not a local concern but of national importance, and not to be hampered in their work by such a burden of debt. It was entirely due to this wiping out by Government of a large indebtedness that the harbour could now be conducted on a satisfactory financial basis; and this was the opportunity which the Burgh of Leith was trying to take advantage of. Leith was a party to the bargain come to in 1838, and it should not be allowed in defiance of that bargain to profit by the financial position of the docks which was entirely due to the generous arrangement made by the Treasury in 1860. Every year the Dock Commissioners had to renew loans to the amount of about £100,000. They had no rates behind them nor a railway company; Bo'ness, Grangemouth and Methil docks were owned by railway companies, and Glasgow had all its municipal credit behind it. In these circumstances a further liability for local rates would seriously prejudice Leith Docks, and injure their credit as extensive borrowers. Large works were required at the docks involving more capital. At present the construction of a graving dock was postponed to await the decision of this rating question.

On the subject of the exemption from the public health assessment counsel for the Harbour Commissioners did not press the opposition to the repeal clause.

It was *argued* for the objectors on the constitution of the Harbour Commission that the existing disability of Town Councillors produced no difficulty or inconvenience in practice, and that it lay on the promoters to show some reason for the change. The Town Council and the Harbour Commissioners had never worked harmoniously together, and it was not desirable to admit a member of one body to the deliberations of the other.

Argued for the promoters in reply:—A great change had taken place in the financial position of the docks since the exemption from rating was first granted. From surplus revenue the Commissioners had paid off all the debt which had accumulated on the docks during the past hundred years, except some £800,000 which represented the cost of the "Imperial Dock," the latest of the docks. An undertaking so prosperous, which was admittedly for the benefit

Evidence was led for the promoters, and for the objectors.

After adjournment—

The Chairman.—We find the preamble of the bill proved in regard to the tramways clause unanimously, and also in regard to the question of the docks being compelled to pay the public health rate. We find it *not* proved, also unanimously, in regard to the disability of the members of the Council, and also in regard to the arrears [*i.e.* of public health rate]. We do not think the docks should pay the arrears. We find it proved in regard to the general assessment, by the casting vote of the Chairman, that is, that the general assessments be charged on *one-half.*

Counsel for promoters.—Wilson, K.C., C. D. Murray; *Agent.*—T. B. Laing, Town Clerk, Leith; John Kennedy, Parliamentary Agent.

Counsel for objectors, Leith Harbour Commissioners.—Scott Dickson, K.C., Clyde, K.C., J. H. Millar; *Agent.*—A. Noel Paton, W.S.

The fourth clause of the Order as approved by the Commissioners provided as follows:—"From and after the fifteenth day of May one thousand nine hundred and eight the Dock Commissioners shall be liable to be assessed on one-half of the annual value of the lands and premises of the dock undertaking, as appearing in the Valuation Roll for the Burgh General Assessment, and the General Improvement Rate under the Burgh Police (Scotland) Acts, 1892 to 1903, and the Burgh Sewer Rate under section 110 of the Water of Leith Purification and Sewerage Act, 1889, and for the assessments under the Roads and Bridges (Scotland) Act, 1878, and the Town Council shall as from that date impose and levy upon and recover from the Dock Commissioners in respect of the said lands and premises the said proportion of the said assessments." Then followed the repeal of the various statutory exemptions.

The Commissioners for the Harbour and Docks of Leith appealed to Parliament by presenting to the House of Commons a *petition* against the Confirming Bill.

Said petition *argued* against the removal of the exemption from rating substantially for the reasons stated to the Commission and reported above. It was pointed out that "82 per cent. of the total

to nearly £8000, and if the additional liability proposed in the Order were imposed their rates would amount to "over £12,300 per annum, which represents 10 per cent. of the gross revenue of the undertaking for last year." It was urged in addition that clause 4 was inserted only by the casting vote of the Chairman.

In the House of Commons, July 16, 1907—

On the motion for the second reading of the Confirming Bill,

Mr. J. M. Henderson (Aberdeen, W.) moved that it be referred to a joint committee. He said that in the case of an ordinary Private Bill parties had the right to a second hearing, but under the Scottish procedure they had no such right except with the consent of that House. On this Order the decision of the Commissioners had been final on all points except one, and on that the decision had been given by the casting vote of the Chairman. The vote of one man should not be allowed to rescind a procedure a century old; and the Leith Dock Commission asked that a committee of both Houses should decide. Under an Act of Parliament the Leith Dock Commission had for nearly one hundred years been freed from certain local rates. They did their own policing, and maintained, cleansed and policed the dock streets and 2½ miles of streets outside the docks. In respect of this they were freed from the local rates appropriate to these services. The Dock Commission was not like a railway company (which was rated for such purposes), for the Commission did not earn a profit but carried on works for the public benefit without earning any profit. A sum of £800,000 had been borrowed for fresh docks on the faith of the Act of Parliament which exempted them from rating, and it would be a breach of faith if this additional rating were put upon them.

Mr. Walter Rea (Scarborough) in seconding said that Leith owed its prosperity to its docks, and they risked killing the goose that laid the golden eggs if they put additional burdens on the docks. Shipowners would transfer their trade to other ports. The House should be careful not to make a precedent which might be followed by other local authorities having docks within their areas.

Mr. Munro Ferguson (Leith Burghs) hoped the House would reject the motion. Most of the Scottish representatives would rather

that the liability for rates had been put on the Dock Commission by the casting vote of the Chairman was a most frivolous ground for a rehearing. The clause of the Burgh Police Act, 1892, provided that the exemption of the docks should continue only until repealed by Provisional Order. That was a distinct invitation to treat each case on its merits. That had been done in Leith. There was no reason why the ordinary ratepayers should have to make up the rates from which the Dock Commission were relieved. He was surprised that the burgh had been willing to accept half-rates from the docks.

Mr. C. E. Price (Edinburgh, Central) said the question was whether any trading body should enjoy a special exemption from rates. There was no ground for any such exemption. If they lightly set aside the decisions of the local inquiries, there was no benefit left to Scotland from the procedure which had taken so long to establish.

Mr. Austen Taylor (Liverpool, E., Toxteth) said this was a dispute of forty years' standing, and Parliament had four or five times decided the question in the sense desired by the Dock Commissioners. Here a decision imposing an additional capital debt of not less than £100,000 had been imposed by the casting vote of the Chairman. In view of these circumstances was there not a *primâ facie* case for a rehearing?

Mr. Gulland (Dumfries Burghs) opposed a rehearing.

The Secretary for Scotland (*Mr. Sinclair*) said that an unwise decision might have a serious effect on the working of their Private Bill procedure. In 1899 the Government of the day had proposed an automatic rehearing, but the House of Commons had rejected that proposal which would have weakened the authority of these committees. In only four cases since 1899 had there been any demand for a rehearing. In two cases it was refused, and in the other two the decision of the local inquiry had been confirmed. In the present case he thought too much importance was attached to the fact that a decision had been reached by the casting vote of the Chairman. It would be a dangerous precedent to allow a rehearing on that ground. It had not been usual for the Govern-

Mr. Mitchell Thomson (Lanark, N.-W.) spoke in favour of a rehearing.

Sir John Dewar (Inverness) as Chairman of the Commission defended its decisions.

There also spoke in favour of a rehearing Mr. Stuart Wortley, Mr. Watt and Mr. Cathcart Wason; and against a rehearing Mr. Crombie and Dr. Rainy.

The House divided—

For the motion . . .	80
Against	236
Majority against rehearing .	156

In the House of Lords on August 1, 1907—

On the motion for the third reading of the Leith Burgh Order Confirmation Bill,

Lord Saltoun moved the rejection of the Bill. He summarised the facts of the case with reference to the rating clauses. The Dock Commission was exempt from rating under an Act of 1848, and the exemption had been continued in other Acts. He was informed that the surplus revenue of the docks was only £23,000 and could not increase for many years. The Commissioners had been about to raise a loan of £150,000, but would have to postpone doing so on account of the decision of the Committee to make the docks pay half the rates on the assessment. The decision had been reached by the casting vote of the Chairman in absolute contradiction of all the former Acts as to exemption from rates; and this seemed to him an adequate reason for a rehearing of the case. Had he, or perhaps another member, been in the Chair, the decision would have been exactly the opposite; and, therefore, he argued that the decision should not be allowed to pass.

Lord Hamilton of Dalzell (on behalf of the Government) said the course proposed was no doubt a competent one, but he thought they should not take it without good reason. The prosperity of Leith was bound up with that of the docks. It was necessary to give the

they should be rated like any other kind of property. The motion for reference to a joint committee had been made in the other House and had been rejected after full discussion; so that the ordinary procedure had been followed in this case. The Private Legislation Procedure Act, 1899, had been framed so as to avoid appeals as far as possible, because such appeals added greatly to the cost.

Lord Balfour of Burleigh said that the previous speeches had been directed largely to the merits of this particular Bill. This might be unavoidable but was unfortunate. The facts in dispute were that certain material interests were involved, and that a decision on one of these was reached by the casting vote of the Chairman. That fact was announced by the Chairman in intimating the decision. In these circumstances it would have been better if every effort had been made to procure a rehearing under the machinery of the Act under which the inquiry was held. Ordinary procedure had been followed in recent years. The ordinary procedure ought to be a careful discussion and a careful decision as to which House the Confirming Bill should originate in. Under the machinery of the Act it was only the House in which the Bill originated which could order a rehearing.* The obvious intention of the Act was that the question should be decided ministerially as to which House should be the House of origination. Their difficulty was the same as that in which they were placed last year by the Rutherglen Order.† A decision was given which was contrary to justice, and a compromise was arrived at between the parties. If that compromise had not been arrived at under pressure of the House of Lords a grave injustice would have been done. He suggested that the debate should be adjourned in order to see whether a compromise could not be reached in this case. That House could not judge upon *ex parte* statements. The only way in which these matters could be decided was by a committee upstairs, and, unfortunately, they were precluded from so ordering in this case. If they never allowed a rehearing they would break down the whole system which the Act brought into existence. The idea of the Act was that there should be a rehearing when it was demanded by either party, but subject to the obligation that if they failed a second time they should be assessed in costs. That, he thought,

would be a salutary rule. But that was not the machinery of the Act as it now was. It was passed on the presumption that the Scottish Office would act ministerially in the matter, and would take the same position as the Chairman of Committees of the House of Commons, and hold the scales even between the parties. He had watched the procedure for the last two or three years, and in every case a municipal authority had been the party which appealed. That appeal had originated in the other House where municipal authorities had a great deal of power. Last year it was brought to the notice of the House that although the question involved touched some obscure village in Lanarkshire, circulars were sent all over England to their representatives begging them to vote in a particular way on it. If that sort of thing went on it would destroy the procedure under the Bill, simply because it was destroying confidence in it, and if there were to be no rehearing, all the larger Bills would not be sent to a Commission under the Act, because the parties would object to the risk of large interests being decided by the casting vote of a Chairman, however able. The only way in which that could be avoided was by a committee such as their Lordships could refer the matter to. As, however, they could not do that in this case, he suggested that the discussion should be adjourned for two or three days in the hope of some adjustment being made. Otherwise they ran the risk of doing grave injustice to one or other of the parties.

The Secretary for the Colonies (the Earl of Elgin) agreed that it was not desirable to discuss the merits of the case. As to the casting vote of the Chairman, that was provided for by a clause of the Act. He imagined that the casting vote was not expected to be used very frequently; the Chairman had only done his duty in exercising it. The decision of the Committee was therefore valid and effectual. He did not say it was the most satisfactory way of arriving at a conclusion. As to the House of origination, that was a matter of arrangement, and he hoped his noble friend (Lord Balfour of Burleigh) would disabuse his mind of any impression that there had been any desire on the part of the Secretary for Scotland to introduce a Bill in any other way than that which was most convenient for discussion. It was, however, most desirable that it should

desired he would take that into account. There had only been, prior to that Bill, four or five bills in which this question of appeal had arisen. Three of them had been introduced in the other House, and one in their Lordships' House. That one appeared when Lord Balfour of Burleigh was Secretary for Scotland.

Lord Balfour of Burleigh.—So did the first of the others.

The Secretary for the Colonies replied that he only mentioned them to show that there was no ground for the assertion that there was any disposition to override the convenience or the wishes of the House of Lords. They were quite ready to agree to an adjournment, but they could not agree to set up a committee to rehear the Bill.

Lord Avebury called attention to the fact that this Bill overrode several public Acts of Parliament. Their House had always held that to be extremely undesirable in a Private Bill. In the case of Woolwich their Lordships deleted a clause in a Private Bill which proposed to remove an exemption from assessment in the case of a Woolwich railway.

The Lord Chairman of Committees (Lord Onslow) said the proposal to adjourn was to enable the parties to come to some arrangement. He understood that some negotiations had taken place between the parties but without success. That House could not go into the merits of the Bill, and it could not refer the Bill to a committee because the House of Commons had decided against that course. He regretted that a rehearing could not be had in this case, not because the decision had been given by the casting vote of the Chairman, but in this case a battle had been going on for twenty years. Four times an appeal had been made to Parliament without success. And now on the fifth occasion it had been decided only by this casting vote. In a case of that kind it was a calamity that there could not be a rehearing, as there would have been if, instead of a Scottish Order, this had been a Private Bill. He thought, as matters stood, they were bound to uphold the decision of the Committee. The only alternatives were to reject the Bill, which he hoped they would not do, or to adopt the amendment of Lord Plymouth, which they could only do on the general ground that it was desirable to have a rehearing, and not because it expressed their views on the merits.

pay a fair share of the rates of a district from which they gained considerable advantage. From 1867 to 1905 the Dock Commission paid the public health rate, and under the Bill the exemption given them by the decision in the Greenock case would be continued until 1911. If the adjournment did not result in an arrangement the Bill should pass as it stood.

The Earl of Plymouth had no objection to an adjournment; and in spite of the failure of previous negotiations the conditions might be altered by the discussion which had taken place.

Lord Saltoun would not press his motion, but would agree to a short adjournment.

The motion for adjournment was agreed to.

7th August—

On the adjourned debate,

Lord Saltoun withdrew his motion for the rejection of the Bill in consideration of the amendment which Lord Plymouth intended to propose.

The Bill was then read a third time.

On the question that the Bill do pass, *Lord Plymouth* moved that clause 4 (repealing the existing exemption of the docks from burgh rates) be struck out. He made this motion on the ground that the matter had received insufficient consideration. The clause would involve a heavy burden on the Dock Commissioners, who already had to provide for watching, lighting, &c., the public quays and roads within their dock area, and to maintain two miles of road outside the dock area. This they did at a cost of about £12,000, and, in addition, they paid rates amounting to £10,000.

The First Lord of the Admiralty (Lord Tweedmouth) said the Dock Commissioners had offered to accept the rating clause if its operation were postponed till 1918, but this had been declined. Also they had offered an arrangement whereby they should be liable for rates on an increasing proportion of the rateable value, commencing at one-tenth and increasing annually to four-tenths. He urged that the parties should come to an agreement.

The Lord Chancellor urged that they could not throw out one clause of the Bill without any knowledge of how it would affect the others. He wished the parties would come to an agreement;

Aberdeen, 1st and 2nd May 1907.

ABERDEEN CORPORATION PROVISIONAL ORDER.

[Before John A. Dewar, Esq., M.P., *Chairman;* Lord Saltoun; Lord Torphichen; and Viscount Dalrymple.]

The Aberdeen Music Hall Company, objectors.

Locus Standi—Music Hall Company—Art Gallery Held in Trust by Corporation—Assessment for Maintenance of Art Gallery—Power to Let Art Gallery for Exhibitions, &c.—Music Hall—Competition.

An Order promoted by the Corporation of a city contained power to make, *inter alia*, the following regulations with regard to an art gallery held in trust by the Corporation, namely—(1) To put it upon the rates, and (2) by clause 56 (4) to let it "for exhibitions, receptions, lectures, and any other like purposes." A petition against the Order was lodged by the owners of an old-established concert-hall on the ground of competition, and the promoters objected to the petitioners' *locus*. After discussion the Commissioners refused the petitioners a *locus* on preamble, but allowed them a *locus* on clauses. At adjustment of clauses clause 56 (4), which the petitioners objected to, was allowed to stand.

In an order promoted by the Corporation of the City of Aberdeen the promoters sought power to make certain regulations in connection with the Art Gallery and Industrial Museum at Schoolhill, held in trust by the Corporation, and under the charge of a Committee of Management of Aberdeen citizens. By clause 58 of the Order the Corporation proposed that so far as the expenses of the Art Gallery were not defrayed by the fees or charges received by the Committee the deficiency should be met by an assessment of ½d. per £1 on the annual value of the lands and heritages as entered in the valuation roll for the city. Clause 56 (4) of the Order provided that the Committee should have and might exercise the following power in connection with the Art Gallery:—"They may let the Art Gallery or any part thereof for exhibitions, receptions, lectures, and any other like purpose." This sub-section was objected to in a petition lodged

Certain Golf Clubs, objectors.

Locus Standi—Acquisition of Commonty by Corporation—Opposition by Golfers —Immemorial Right—Servitude.

An Order promoted by a Corporation for the purpose, *inter alia*, of acquiring for the city a portion of commonty was opposed by certain golf clubs which had laid out and maintained golf courses on the land in question. The *locus standi* of the petitioners was challenged by the promoters. After discussion the Commissioners allowed the petitioners a *locus* on preamble.

In the same Order the Corporation of the City of Aberdeen sought powers to acquire a portion of land known as the Old Town, or King's, Links. In 1894 another portion of the Aberdeen Links, known as the Queen's Links, had been acquired by purchase by the Corporation, and the promoters of this Order set forth that it was desirable that they should be possessed as full proprietors of the whole of the links in order that they might be made available as a recreation ground for the inhabitants of the city. Clause 39 (3) of the Order sought power "to lay out or set apart any part of the links for a golf course."

A petition against the Order was lodged by four golf clubs, which during the past fifteen years had laid out and maintained golf courses on the links, and during the past five years had expended £600 on improving these courses. The petitioning golf clubs represented a membership of 600 persons, ratepayers in the City of Aberdeen. Golf had been played by the citizens of Aberdeen on the Links in virtue of immemorial right for one hundred and twenty years, and although the golf courses laid out and maintained by the petitioners were the only courses on the links, no charge had been made by the petitioners or the Corporation for playing golf thereon. The promoters objected to the petitioners being allowed a *locus* against the preamble on the ground that there was no proposal to destroy the golf courses or remove the golfers from them; all that was sought was power to regulate the playing of golf on the links.

Argued for the petitioners, that they were entitled to oppose

Edinburgh, 24th and 25th July 1907.

EDINBURGH CORPORATION (TRAMWAYS, &c.).

[Before Lord Sanderson, *Chairman;* Earl of Galloway; John D. Hope, Esq., M.P.; and Major Anstruther-Gray, M.P.]

The Edinburgh and District Tramways Company, Limited, objectors.

Locus Standi—Tramway—Extension of System by Owners of Tramways—Opposition by Lessees.

An Order promoted by a Corporation for power to extend a system of tramways owned by the Corporation was opposed by a company to whom the Corporation had leased the tramways. The *locus* of the petitioners to oppose the preamble was challenged by the promoters on the ground that by the terms of the lease the discretion of making new tramways in the city was given to the Corporation, and that the petitioners were protected by arbitration clauses in the lease against this discretion being abused. After discussion the Commissioners allowed the petitioners' *locus.*

This Order was promoted by the Corporation of the City of Edinburgh for the purpose, *inter alia*, of obtaining power to make an extension of the Corporation cable tramways system. The proposed extension was opposed by the Edinburgh and District Tramways Company, lessees, along with another company, of all the tramways owned by the Corporation, under an agreement of lease of 1898. By this agreement of lease the Corporation leased to the objecting Company "the whole tramways belonging to the Corporation, or that may hereafter be constructed or acquired by the Corporation within the Royal Burgh, City and County of the City of Edinburgh. . . . Also the land and buildings, railway sidings, stables and rails . . . belonging to the Corporation, or in course of being erected or prepared for use, or which may be hereafter erected or formed by the Corporation as power stations, or as stabling, car sheds or other

tramways in the adjoining districts, which additions and extensions, with relative works and premises, shall fall under the present lease and be held by the second parties (*i.e.* the lessees) under all the conditions and obligations hereof, so far as applicable thereto, in the same way as if the same had formed part of the original subjects hereby let." The rent to be paid by the lessees was fixed by the terms of the lease upon the basis of 7 per cent. upon the total expenditure upon tramway works, the amount upon which the 7 per cent. was to be calculated including interest at 3 per cent. during the period of construction. The 3 per cent. was to be added to the principal sum, and on the accumulated amount 7 per cent. was to be paid. It was further provided that "in the event of the Corporation hereafter constructing additional tramways within the city and suburbs, or prolongation or extension of existing tramways belonging to them, as they shall be entitled to do, and charge the expense thereof to the Tramway Capital Account as aforesaid, the Corporation may apply to the working of such new tramways or extensions any kind of motor which Parliament may have authorised them to use for the time being; and the second parties (*i.e.* the lessees) shall be obliged to use and apply such motors thereon accordingly." The lease also contained two arbitration clauses providing for reference of matters of fact and questions of law to two men of skill whose decisions on points referred to them should be final.

In their petition the Edinburgh and District Tramways Company, Limited, objected to the Order on the following grounds, namely:— That the expenditure upon tramway works had been so exceptional and extravagant, and the rental payable had been so great, that it was only with difficulty that the petitioners had been able to make ends meet, and the dividend upon their preference capital was several years in arrear. Further, the Corporation had recently obtained powers to construct certain new lines in the north side of the city, and as these lines would pass through a thinly-populated district the working of these lines must result in a serious loss to the petitioners. The petitioners further objected to the proposed new tramways as being unnecessary in the public interest and incapable of being worked at a profit.

to fight the Corporation on the question as to whether the proposed extension was likely to be a paying concern, because by the terms of their lease the petitioners committed the discretion of making new tramways within the city to the Corporation, and were bound to pay 7 per cent. upon the amount expended. The petitioners were sufficiently protected by the arbitration clauses in the lease against the abuse of their discretionary powers by the Corporation.

Argued for the petitioners, that the lease between the promoters and the petitioners contained no provision prohibiting the petitioners from opposing any applications for extension in Parliament; that in the previous year, in a similar application by way of Private Bill * which went through both Houses of Parliament, the petitioners' *locus* was not objected to and they led evidence. It was true that in the Private Bill referred to there were questions raised with regard to the motor power to be used on certain of the tramways, but these questions did not affect that of *locus* at all. The Corporation proposed to run a line of tramways through agricultural lands where there was no population to serve, and where a market was held on only one day a week, and for the one day's traffic the promoters were going to impose a burden of from £1000 to £1300 a year on the petitioners. The Corporation had not chosen to refer this matter to the arbiter provided for in the lease, and therefore the petitioners should be allowed to put their case before the tribunal.

The Chairman.—"I do not think you need trouble to go further into the matter. The Commissioners are of opinion that, following the precedent of the Committees of last year, the Company should be heard as regards the necessity of the extension, although some of the arguments put forward in the petition as to the extravagant nature of previous construction and questions of that kind, seem rather irrelevant."

The Commissioners allowed the *locus*.

Counsel for promoters.—Wilson, K.C., W. J. Robertson, Macpherson; *Agents.*—Thomas Hunter, W.S., Town-Clerk, Edinburgh; A. & W. Beveridge, Parliamentary Agents.

Counsel for objectors, The Edinburgh and District Tramways Company, Limited.—

GALASHIELS DRAINAGE AND BURGH EXTENSION PROVISIONAL ORDER.

[Before Lord Sanderson, *Chairman;* Earl of Galloway; J. D. Hope, Esq., M.P.; and Major Anstruther Gray, M.P.]

On the Report of County Council of Roxburgh.

Procedure—Report by County Council—Private Legislation Procedure (Scotland) Act, 1899, *sect.* 11 (3)—*Right to be heard on Report.*

A county council which has lodged a report under section 11 (3) of the Act of 1899 on a Provisional Order is not entitled to be heard in support of such report.

The Burgh of Galashiels promoted this Order for the purpose of obtaining powers to carry out a system of draining and sewage treatment, and to extend the burgh boundary to include some 31 acres of adjacent ground on which to erect their proposed sewage works. The ground to be annexed was in the County of Roxburgh, and the County Council of that county made a report to the Commissioners in terms of section 11 (3) of the Private Legislation Procedure (Scotland) Act, 1899. The third sub-section there provides: "In addition, any County Council, or Town Council, or Burgh Commissioners connected with the locality to which any Draft Provisional Order referred to Commissioners under this Act relates, may make a report to the Commissioners respecting the provisions of the Draft Order, and the Commissioners shall consider the recommendations contained in the Report." The County Council also lodged a petition against the Order, but did not appear in support of their petition. There was no other party opposing the preamble. The Report of the County Council was dealt with by counsel for the promoters, and evidence in favour of the Order was led directed to the objections of the County Council contained in their Report.

At this stage the County Clerk of Roxburgh claimed to be heard on behalf of the County Council, which had lodged a petition in addition to the Report, but had not appeared in support of their petition. Counsel for the promoters objected to the County Clerk being heard, and *argued* that the theory of the Act of 1899 was that there were two alternative courses open to the local County

course was to take advantage of section 11 (3) of the Procedure Act, and make a report as the County Council here had done. The Commissioners had already given full consideration to the Report. The petition and the Report were almost identical in substance. This appearance, after the Report had been considered by the Commissioners, was not contemplated by the statute and should not be allowed.

The Commissioners *refused* to hear the County Clerk on behalf of the County Council.

On the Report of the County Council of Roxburgh.

Burgh—Extension—Loss to County of Assessable Area—Adjustment of Liabilities —Burgh Police (Scotland) Act, 1903, *sect.* 96.

Burgh—Drainage—Annexation to Burgh of Site of Sewage Works.

On an Order by which a burgh sought powers for carrying out a new drainage and sewage disposal scheme, and for extending the burgh to include the site of the proposed new sewage works, the County Council of the county from which said site was to be disjoined reported that the burgh had ample powers under the Public Health Act, 1897, to treat their sewage outside the burgh, and that there was no ground for depriving the County of an assessable area, on the integrity of which they were entitled to rely to meet their liability. A clause of the Order imported section 50 of the Local Government Act, 1889, as applied by section 96 of the Burgh Police Act, 1903, for adjustment of liabilities affecting the transferred area. The preamble was found to be proved.

In this Order (of which the general purpose is explained above) the Burgh of Galashiels sought to extend the municipal boundary to include a piece of adjacent land of about 31 acres which was inclosed by the Gala Water, the Tweed and the railway. Of this land 18 acres were agricultural and the remainder waste. It was desired to erect on this land bacteriological purification works for the town sewage and the waste products of the mills. It was stated in the preamble that there was not in the burgh any sewage system,

for effecting these purposes it was expedient that the Town Council should construct a sewage and drainage system in accordance with the powers conferred by the Burgh Police (Scotland) Acts and the Public Health (Scotland) Acts, and should be further authorised and empowered to construct and maintain the main and branch sewers and other works described in the Order.

The only opposition on the preamble was contained in the Report made by the County Council of Roxburgh to the Commissioners under section 11 (3) of the Private Legislation Procedure (Scotland) Act, 1899. That Report set forth the objections of the County Council to the proposed extension of the burgh in the following articles:—

"Under section 103 of the Public Health (Scotland) Act, 1897, the Town Council have power, subject to the provisions of the Rivers Pollution Prevention Acts, to cause their sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or, if necessary, for the purpose of outfall or distribution, or disposal, or treatment of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, but so as not to create a nuisance. The Town Council are not therefore under any necessity to extend the existing burgh to include the lands described in the second schedule to the Order for the uses and purposes set forth in the 13th section of the Order, all which uses and purposes can be equally well carried out and attained without altering the boundaries of the county and the burgh.

"Article 6.—The reporters maintain that, unless very strong reasons can be shown, it is highly inexpedient to interfere with the area of existing administrative units. The mere fact that the extension sought for would result in the Town Council securing for the burgh the rating value of the subjects to be acquired is not sufficient. That result would be attained only by inflicting a corresponding loss upon the reporters, who are entitled to rely upon their rating area being left undisturbed (except for very cogent reasons) for the fulfilment of the obligations undertaken by the County and the Melrose District. Within the last three years the Melrose District Committee have erected, jointly with Melrose Burgh, an infectious disease hospital, at a capital cost of

Melrose District Water Order of 1904, constructed a reservoir, filter-beds, and other relative works at a capital cost of about £13,000, and are exercising the power conferred on them by their Order to charge a public water-rate over their whole Melrose District of the County."

To meet the case of capital expenditure which might have been incurred by the County a clause (64) in the Order provided:—"Section 50 of the Local Government (Scotland) Act, 1889, as applied by section 96 of the Burgh Police (Scotland) Act, 1903, shall apply and have effect on the extension of the boundaries of the burgh by this Order." The section 50 referred to of the Local Government Act made provision for the adjustment of property and liabilities between local authorities in the event of an alteration of boundaries, to the effect that such authorities might make agreements for the purpose of such adjustment, and that, failing agreement, such adjustment should be made by the Boundary Commissioners. The Burgh Police Act, 1903, sect. 96, provided: "On the formation of any new burgh or extension of the boundaries of any existing burgh, section 50 of the Local Government (Scotland) Act, 1889, relating to the adjustment of property and liabilities consequential on an alteration of boundaries, shall apply as if in lieu of that Act, and the Boundary Commissioners, the Burgh Police Acts, and the Sheriff were respectively mentioned therein."

Argued for the promoters:—No county was now regarded as having any vested right in a particular rateable area, for the rates levied in a district were expended for the benefit of the district, and the county did not make a profit out of them. No compensation therefore was due to the County for loss of a rateable area. So far as there had been expenditure by the County for the benefit of the transferred area, as in erecting a hospital or a bridge, there must be an adjustment between the burgh which annexes and the county from which the area is taken. This was provided for in the proper form by clause 64 of the Order (quoted *supra*). That clause embodied the statutory provision for such cases and was the model clause which had been embodied in other Provisional Orders.* It was a reasonable

* Grangemouth Waterworks and Burgh Extension, 1905, 5 P. L. R. 1. Other precedents referred to by counsel were Millport Provisional Order, 1905,

and convenient arrangement that this site, the most suitable for the required sewage works, should be included within the promoters' boundaries.

Evidence was led to the effect that the land proposed to be annexed to the burgh was the only suitable site within a reasonable distance; that the land was of little value for any other purpose than the sewage works; and that, if used for that purpose, it should be brought within the burgh.

The Commissioners found the preamble proved.

At adjustment of clauses,

Tweed Commissioners, objectors.

Burgh—Drainage—Discharge of Unpurified Sewage into River—Floods—Notice to Fishery Commissioners.

Burgh—Drainage—Discharge of Sewage into River during Repairs, &c.—Interest of Fishery Commissioners—Execution of Repairs at Sight of Third Party.

A burgh in promoting a sewage purification scheme sought power to discharge unpurified sewage into the river in times of exceptional flood. The statutory Commissioners charged with the care of fishings in the river sought amendment of clauses to compel the burgh to give them notice when such discharges due to flooding were going to be made. The Fishery Commissioners also sought that repairs should be done to the sewers by the promoters at the sight of some third party. The former amendment was *allowed:* the latter was *refused.*

In this Order the promoters proposed a clause (20 of Draft Order) which would authorise them to discharge unpurified sewage into the river Gala when their sewers "are being repaired, cleansed, altered or renewed, or during floods, or in consequence of any accident or stoppage." The Commissioners under the Tweed Fisheries Acts appeared at the adjustment of clauses and proposed amendments to compel the promoters to give them immediate notice of their intention to discharge sewage into the river Gala. The promoters conceded amendments providing for such notice in the case of accident or stoppage for repairs, but contested the claim to such notice in the case of flooding.

safeguarded so as to cause as little risk as possible to the fish in the river from the discharge of crude sewage. There was serious risk in these discharges that the fish would be poisoned if the discharge were all made at one place. The Commissioners merely sought that they should receive intimation, as in the case of discharge due to repairs, &c., and thus be able to trace the sewage to its source and to take precautions. The sewage would now be concentrated in one pipe and would thus be more dangerous. It was very important for these objectors that all repairs to the sewage works should be executed promptly, and that some pressure should be put on the promoters for that purpose; therefore it should be put upon some neutral person to see that the work was done with proper speed.

The promoters *argued* that the demand on them proposed was excessive, as an exceptional rainfall might bring down the river in spate in a very few hours. With reference to the supervision of repairs by a neutral party it was urged that the promoters were a public body charged with a public duty just as much as the objectors, and that the objectors would have a remedy before the Sheriff if the promoters were in default. Such a provision therefore would be burdensome and unnecessary.

The amendment as to notice to the Tweed Commissioners of discharge of sewage in consequence of flooding was *inserted;* that with reference to repairs at sight of a neutral party was *refused.*

Counsel for promoters.—Wilson, K.C., H. W. Beveridge; *Agents.*—J. B. Lumsden, Town Clerk, Galashiels, A. & W. Beveridge, Parliamentary Agents.

Counsel for objectors, The Commissioners under the Tweed Fisheries Acts.—Macmillan; *Agents.*—Mackenzie, Innes & Logan, W.S.

TABLE

OF THE

PROVISIONAL ORDERS APPLIED FOR IN SESSION 1907 UNDER THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899,

SHOWING

THE GENERAL CHARACTER OF THEIR PROVISIONS AND THE DECISIONS OF THE CHAIRMAN OF COMMITTEES OF THE HOUSE OF LORDS AND THE CHAIRMAN OF WAYS AND MEANS IN THE HOUSE OF COMMONS REGARDING THE PROCEDURE TO BE FOLLOWED IN EACH CASE, AS EMBODIED IN THEIR REPORTS.

The said Act provides, sect. 2 (2):—

"If it appears from the report of the Chairmen that either of the Chairmen is of opinion that the provisions, or some of the provisions, of the Draft Order do not relate wholly or mainly to Scotland, and are of such a character or magnitude, or raise any such question of policy or principle, that they ought to be dealt with by Private Bill and not by Provisional Order, the Secretary for Scotland shall, without further inquiry, refuse to issue the Provisional Order, so far as the same is objected to by the Chairman or Chairmen."

Name of Order.	Purposes of Order.	Procedure Ordered.
Applications in December 1906.		
1. Aberdeen Corporation.	Part I. To authorise Corporation to acquire Links, to take over Art Gallery and Museum, to execute street works, and amend building regulations.	Provisional Order.
	Part II.	*Private Bill.*

Name of Order.	Purposes of Order.	Procedure Ordered.
3. Caledonian Railway.	To authorise certain railway works, and to grant extension of time.	Provisional Order.
4. Clyde Navigation.	To authorise the Trustees to construct a wharf and to borrow money.	Provisional Order.
5. Dundee Corporation.	To extend boundaries, to construct works and tramways, &c.	Provisional Order.
6. Edinburgh Corporation	To authorise the Corporation to take water for condensing purposes, to provide for notification of tuberculosis, &c.	Provisional Order.
7. *Electric Supply Corporation, Limited.*	*To authorise transfer of undertakings to the company.*	*Private Bill.*
8. *General Accident, Fire and Life Assurance Corporation, Limited.*	*To authorise the issue of insurance coupons, &c.*	*Private Bill.*
9. *Glasgow Corporation.*	*To authorise certain tramways, to make provision for testing illuminating power of gas, sale of coal, weights and measures, meetings of Corporation, and representation on Convention of Royal Burghs.*	*Private Bill.*
10. Kilmarnock Corporation Water.	To authorise construction of additional waterworks.	Provisional Order.
11. Leith Burgh.	To impose liability for rates on the harbour and docks, and minor purposes.	Provisional Order.
12. Leith Harbour and Docks.	To authorise construction of a new dock.	Provisional Order.
13. Oregon Mort-	To enable the company to convert un-	Provisional

Name of Order.	Purposes of Order.	Procedure Ordered.
15. Portobello and Musselburgh Tramways (Levenhall Extension).	To construct tramways.	Provisional Order.
16. *Renfrewshire Upper District (Eastwood and Mearns) Water.*	*To authorise construction of waterworks and levy of water assessment, &c.*	*Private Bill.*
17. *Royal Bank of Scotland.*	*To alter provisions of the incorporating charter.*	*Private Bill.*
Applications in April 1907.		
1. Aberdeen Harbour.	To empower Harbour Commissioners to borrow.	Provisional Order.
2. *City of Glasgow.*	*To extend the burgh.*	*Private Bill.*
3. Clyde Navigation (Superannuation).	To establish a superannuation fund.	Provisional Order.
4. Dumbarton Burgh.	To extend the limit of guarantee rate for harbour.	Provisional Order.
5. Dumbarton Burgh and County Tramways.	To authorise transfer of tramway undertaking from one company to another.	Provisional Order.
6. Edinburgh and District Water.	For borrowing powers for waterworks, and to regulate terms of repayment, and to restrict altitude to which compulsory supply must be given.	Provisional Order.
7. Edinburgh Corporation (Tramways, &c.).	To authorise extension of tramways.	Provisional Order.
8. Gal...		

DIGEST

OF MATTERS DEALT WITH IN THIS VOLUME

WILLIAM GREEN AND SONS, PRINTERS, EDINBURGH